IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

J U D G M E N T

Chandrapal & Anr. v. State of Rajasthan

(1) D.B.Criminal Appeal No.173/2001

Subhash & Anr. v. State of Rajasthan

(2) D.B.CRIMINAL APPEAL NO.318/2001

Both appeals u/S.374 Cr.P.C against the judgment dated 13.2.2001 passed by Additional Sessions Judge No.2, Sriganganagar Camp Suratgarh in Sessions Case No.9/98, State Vs. Chandrapal & Ors.

DATE OF JUDGMENT : 6th JANUARY, 2005

P R E S E N T

HON'BLE MR.JUSTICE BHAGWATI PRASAD
HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Kulwant Singh]
Mr. Kailash Khatri] for the appellants.
Mr. Vishnu Kachhawaha, P.P., for the State.
Mr. R.S.Gill, for the complainant.

BY THE COURT :

These two appeals are arising out of the judgment dated 13.2.2001 passed by learned Additional Sessions Judge No.2, Sriganganagar, Camp Suratgarh in Sessions Case No.9/98, State v. Chandrapal and others. Appeal No.173/2001 is preferred by accused appellants Chandrapal and Maniram and Appeal No.318/2001 is filed by accused appellants Subhash and Suresh.

By the judgment impugned learned Additional Sessions Judge No.2, Sriganganagar convicted and sentenced the accused appellants for the offences details of which are set out below in tabular form:-

Sr. No.	Name of Accused	Conviction for offence	Sentenced for
1.	Chandrapal	302,307/34 IPC	Life imprisonment with fine of Rs.500/-, in default of payment of which 3 months S.I.and 7 yrs.imprisonment for offence u/S.307/34 IPC.
2.	Maniram	302/34 and 307/34 IPC	- do -
3.	Subhash	302/34 and 307 IPC	- do -
4.	Suresh	302/34 and 307/34 IPC	- do -

The facts of the case, as unfolded by the prosecution, are that Dharampal (PW-2) was not having good relations with his father Maniram and younger brother Chandrapal, therefore, they were living apart in separate house though adjacent. Dharampal was living with his own family unit and his parents were living with younger brother Chandrapal. Maniram and Chandrapal were in habit of abusing Dharampal, therefore, he was not in talking terms with Maniram, Chandrapal and other parental family members.

On 7.1.1998 deceased Krishna, who happened to be father-in-law of Dharampal, came to village Kanour to send off her daughter Smt.Maya (PW-1) wife of Dharampal. On 7.1.1998 accused Maniram whole the

day abused Dharampal. In evening of 7.1.1998 accused Chandrapal along with other accused persons Subhash and Suresh came in a jeep owned by Subhash driven by Subhash himself. They also started abusing Dharampal and made a call to him to come out from the house. When Dharampal came out from the house, Subhash drove the jeep rashly towards him but Dharampal managed to escape himself though he met with slight injuries. Looking to aggressive attitude of accused persons deceased Krishna also came out from the house just to negotiate with them, but he was assaulted by Chandrapal, Maniram, Subhash and Suresh with gandasi and lathis. As a consequence of which Krishna died at the spot. The entire incident was also witnessed by Smt.Maya (PW-1) wife of Dharampal and Sanjay (PW-3) son of Dharampal.

Information of the incident was lodged by Dharampal at police station Rajiasar. Accordingly C.R.Case No.2/98 was registered contemplating offence u/Ss.302, 307/34 IPC and investigation was taken up. The investigating team found dead body of Krishna at the place of occurrence. The same was sent for postmortem examination after holding inquest. During investigation site plan of the place of occurrence and site notes were prepared. The investigating team also seized a broken balli (a stick of uciliptic tree), a babool stick, clothes of deceased, juti of deceased and also some blood stained as well as simple earth from the spot. A blood stained gandasi was also recovered on 19.1.1998 at the instance of accused Chandrapal.

Dr.Ratanlal (PW-4), in charge-cum-Sr.Medical Officer, Community Health Centre, Suratgarh held autopsy upon the dead body of Krishna and found the following:-

> "External Injuries :
>
> (1) Abrasion : 1x1/2 cm on left forehead.
>
> (2) Incised wound with clotted blood : 10cmx1cmxbone deep on left parietal area of scalp. There is subcutonus collection of blood underlying parietal bone is also fractured. Meninges and brain (parietal lobe) are congested with laceration in parietal lobe with collection of blood.
>
> (3) Incised wound with clotted blood : 8cmx1cmx1cm on occipital area of scalp just behind the centre with collection of clotted blood and fracture of occipital bone-occipital lobe of brain is congested with laceration and collection of blood.
>
> (4) Lacerated wound with clotted blood 7x1cmxbone deep with collection of blood underneath.
>
> (5) Bruise : 6x4cm on right parietal area of scalp.
>
> Note :- (1) all the injuries are ante mortem in nature.
>
> (2) Injury No.2 and 3 are caused by sharp weapon.
>
> REMARKS :
>
> In my opinion, cause of death is shock and coma due to brain injury."

Dr.Ratanlal opined that the injuries were ante mortem and the injuries No.2 and 3 were caused by sharp weapon. The cause of death was shown as shock and coma due to brain injury.

The seized articles including lathis and gandasi were examined by State Forensic Science

Laboratory, Jaipur and a report (Ex.47) admissible u/S.293 Cr.P.C was submitted. On serological examination the blood stains on gandasi were found to be of human origin having group “B”.

The prosecution after regular investigation filed a charge sheet before the court of Additional Chief Judicial Magistrate, Suratgarh wherefrom the case was committed to the court of Sessions. The charges for commission of offences u/Ss.302 307/34 IPC were framed against accused appellants but they pleaded not guilty to the charges levelled.

To sustain the charges levelled against the accused appellants prosecution examined Smt.Maya (PW1), Dharampal (PW-2), Sanjay (PW-3), Dr.Ratanlal Agarwal (PW-4), Hansraj (PW-5), Ramavtar Meena (PW-6), Biharilal (PW-7) and Investigating Officer Om Prakash (PW-8). The statements of the accused appellants were recorded u/S.313 Cr.P.C and one Shri Sohanlal DW-1 was examined in defence.

The trial court on basis of evidence available on record convicted accused Chandrapal for commission of offences u/S.302 and 307/34 IPC. Accused Subhash was convicted for offences u/Ss.302/34 and 307 IPC. Accused Maniram and Suresh were convicted for offence u/Ss.302/34 and 307/34 IPC. The trial court sentenced all the four accused for life term with a fine of Rs.500/- and in default further simple imprisonment of three months and also sentenced for term of seven years' for commission of offences

details of which are already given above. Being aggrieved by the judgment impugned dated 13.2.2001 these two appeals are preferred by the accused appellants.

We have heard learned counsel for the appellants as well as learned Public Prosecutor and the counsel for the complainant.

Before proceeding further, it is pertinent to mention here that during the pendency of present appeals accused Maniram died on 6.12.2002 and an information in this regard was sent to this Court by Station House Officer of Police Station Rajiasar on 16.11.2003 along with a death certificate issued by Gram Sewak-cum-officiating Secretary, Gram Panchayat Bhojewal, Tehsil Suratgarh, Sriganganagar. In view of the fact above the appeal No.173/2001 stands dismissed becoming infructuous so far as it relates to accused Maniram.

The contention of the counsel for the appellant Chandrapal is that the prosecution witnesses viz. Smt.Maya, Dharampal and Sanjay were not the actual eye witnesses and they had been clothed by the police to be the eye witnesses, as whatever stated by them on oath before the court was never stated by them in their statements u/S.161 Cr.P.C and the same was also not stated by Dharampal while lodging FIR at police station Rajiasar. They did not mention any specific part played by appellant Chandrapal either in FIR or in their statements u/S.161 Cr.P.C and also in

the statements of Dharampal recorded u/S.164 Cr.P.C. According to the counsel for the appellants the court below failed to appreciate the above position and erred while convicting the appellants.

We have thoroughly examined the judgment impugned and also the entire record of the case.

Learned trial court while convicting accused appellant Chandrapal relied upon the statements of eye witnesses PW-1 Smt.Maya, PW-2 Shri Dharampal, PW-3 Shri Sanjay and PW-4 Dr.Ratanlal who made autopsy upon the dead body of Krishna.

PW-1 Smt.Maya in quite unambiguous terms stated that Chandrapal gave gandasi blow in the left side of head of her father twice and other accused gave lathi blow. The relevant portion of the statements given by PW-1 Smt.Maya is worth to be noted as under:-

> " मेरे पिताजी मेरे घर से दो, तीन पांवड़ा आगे निकल कर गली में आये । मुलजिमान हाजिर अदालत चारों ने मेरे पिताजी को मारपीट करना शुरू कर दिया । चन्द्रपाल के पास गण्डासी, बाकी तीनों के पास लाठियां थी । चन्द्रपाल ने मेरे पिता के सिर के बांई तरफ आगे व पीछे की तरफ गण्डासी की चोटें मारी बाकी मुलजिमान ने लाठियों से मेरे पिता के चोटें मारी । मैं व मेरा लड़का संजय अपने घर के दरवाजे के पास खड़े थे वहां से हमने वाका देखा था ।"

PW-1 Smt.Maya reiterated her stand in cross examination also by stating :-

> " सबसे पहले जीप से सुभाष उतरा उसके हाथ में लाठी थी उसके पीछे पीछे चन्द्रपाल उतर गया जिसके हाथ में गण्डासी थी बाकी दोनों सुरेश व मनीराम भी उतर गये उनके हाथों में भी लाठी थी । मेरे पिता के हाथ में कुछ नहीं था कम्बढ

ओडा हुआ था । चन्द्रपाल ने मेरे सामने मेरे पिता के सिर के बं ई गण्डासी की चोट मारी जिससे मेरे पिता गिर गये दूसरी चोट पीछे से गर्दन पर मारी उसके बाद सभी मुलजिमान लाठियों से मारपीट करने लगे । मेरे पिता जी पहली चोट लगते ही मुंह के बल गिर गये थे ।

चन्द्रपाल ने जब पहली चोट मारी तब वो मेरे पिता के सामने से थोड़ा सा बांई तरफ खड़ा था । मेरे पिता जी से चन्द्रपाल जब पहली चोट तीन फुट दूर से चोट मारी थी । मेरे पिता जी गिर गये जब चन्द्रपाल ने दूसरी गण्डासी की चोट मारी तब थोड़ा बांई तरफ होकर मारी थी । दूसरी चोट मारते वक्त उसने हाथों को दायें से चोट मारी ।"

PW-2 Shri Dharampal also stated that Chandrapal was carrying a gandasi in his hand and other three accused were equipped with lathis. He also in quite unambiguous terms states that Chandrapal gave two gandasi blows on the head of deceased Krishna. The relevant portion of the statements given by PW-2 Dharampal are also worth to be noticed :-

" चन्द्रपाल के हाथ में गण्डासी थी बाकी तीनो मुलजिमान के हाथ में लाठियां थी ।"

" मेरा ससुर मृतक कृष्ण थोड़ा आगे कम्बल ओढ़े समझाने के लिए आगे आ रहा था इतने में चारों मुलजिमान जीप से उतरे चन्द्रपाल ने गण्डासी की दो चोट मारी जो एक सिर में व एक पीछे लगी । बाकी इन चोटों से मेरा ससुर गिर गया और जब वो मारपीट कर रहे थे तब जीप की लाईट जल रही थी फिर् मुलजिमान वहां से जीप लेकर भाग गये ।"

"आते ही पहले चन्द्रपाल ने गंडासी की मारी फिर् दूसरे मुलजिमान ने कृष्ण को मारपीट किया ।"

PW-3 Sanjay also stated and specifically pointed out that accused Chandrapal was having gandasi in his hand and Chandrapal gave two blows on the head of deceased Krishna. The relevant portion of the statements given by PW-3 Sanjay are also worth to be noticed:-

" मैं व मेरी मां भी मेरे नाना के पीछे- 2 निकलकर बाहर गेट पर आ गये थे । रात चांदनी थी । हमारे से करीब 20 - 30 कदम की दूरी पर सुभाष, सुरेश, मनीराम के हाथों में लाठियां थी व चन्द्रपाल के हाथ में गण्डासी थी, चारों मेरे नाना को लाठियों व गण्डासियों से मारने लगे ।"

" मेरे नाना के पहले चोट चन्द्रपाल ने मारी मुलजिमान में से सबसे आगे चन्द्रपाल, उसके पीछे सुभाष बाकी सारे साथ थे । जीप का मुंह हमारे घर के दरवाजे की ओर था । मेरे नाना के साथ मारपीट जीप के पश्चिम की तरफ हुई थी । चन्द्र पाल ने थोड़ी सी साईड से कुल्हाड़ी मारी थी । उसने ऊपर से नीचे कुल्हाड़ी की मारी थी । चन्द्रपाल ने दो चोटें मारी थी । मेरा नाना पहली चोट में ही गिर गया था । मेरा नाना उलटे मुंह गिरा था । मेरा नाना गिरा तो उसका सिर उतर की तरफ नहीं था । चन्द्रपाल ने दूसरी चोट गिरे हुए के सिर में गुददी की तरफ मारी ।"

PW-4 Dr.Ratanlal Agarwal, who made autopsy upon dead body of deceased Krishna, stated that the injuries No.2 and 3 were caused by sharp weapon. He also stated that injuries No.2 and 3 were sufficient to cause death. It is also pertinent to note that the Forensic Science Laboratory Rajasthan, Jaipur in its report admissible u/S.293 Cr.P.C found that Ex.D (Gandasi) was having blood stains of human origin.

On basis of the evidence referred above the trial court reached at a definite conclusion that accused Chandrapal committed an offence u/S.302 IPC. The statements of eye witnesses are credit worthy and there is no reason to disbelieve them. We have also examined the statements recorded during investigation only for the reason that the counsel for the appellants emphasize that nothing has been stated by the prosecution witnesses with regard to the weapon used by accused Chandrapal at the time of occurrence of incident. On examination of those statements it is found that all the witnesses in unambiguous terms

stated that Chandrapal was having gandasi in his hand and he assaulted to deceased Krishna. In view of cogent evidence available on record, in our considered opinion, no error has been committed by the trial court in convicting accused Chandrapal for commission of offences u/S.302 IPC.

Accused Subhash and Suresh assailed legality of their conviction under appeal bearing No.318/2001. Learned Additional Sessions Judge, Sriganganagar camp Suratgarh by judgment impugned convicted accused Subhash for the offences u/Ss.302/34 and 307 IPC. Accused appellant Suresh has been convicted for the offences u/Ss.302/34 and 307/34 IPC.

The contention of the learned counsel for the appellants is that there is no material available on record on basis of which accused appellants be held guilty for commission of offence u/S.302/34 IPC.

We have travelled through entire evidence available on record. There is no evidence on basis of which a common intention to cause murder could be detected. Accused Subhash and Suresh even according to the prosecution story were carrying lathis in their hand. The cause of death of deceased Krishna according to postmortem examination report was injuries No.2 and 3 caused due to gandasi blow given by accused Chandrapal. The eye witnesses in quite clear terms stated that after getting the first gandasi blow deceased Krishna fall down and second blow was also given by Chandrapal. Not a single witness has

described specific act of fatal blow by accused Subhash and Suresh. It is also pertinent to note that the court below has also not considered the evidence available on record to deal with the act of accused appellants Subhash and Suresh and also evidence on basis of which common intention to commit murder could be proved. The discussion in entire judgment relates to the act of accused appellant Chandrapal and not to other accused persons. In view of it in our considered opinion conviction of appellants accused Subhash and Suresh for the offences u/S.302/34 IPC deserves to be declared illegal.

Counsel for the appellants straneously urged before us that no evidence is available on record to prove commission of offence u/S.307 IPC by accused Subhash and offence u/S.307/34 IPC by accused Suresh. It is true that presence of accused Subhash, Suresh and Maniram (dead) is proved on basis of statements given by the prosecution witnesses at the time of occurrence of the incident. However, there is nothing on basis of which it can be said that the accused named above acted with intention or knowledge and under such circumstances that by their act they may cause death and they would be guilty of murder. There is also no overt act on part of accused persons. There is no fatal injury caused by accused Suresh or Subhash to deceased Krishna. There is also no evidence on basis of which it can be said that either Subhash or Suresh gave blow to any vital part of deceased.

In view of it the conviction of Subhash u/S.307 and conviction of accused Suresh u/S.307/34 IPC is not justified. Accordingly the appeal preferred by accused Subhash and Suresh deserves to be accepted. Appeal of Maniram after his death has become rendered infructuous, hence meritless.

In the result, the appeal filed by Chandrapal and Maniram is held to be meritless and is, therefore, rejected. The appeal filed by accused Subhash and Suresh is accepted. Their convictions under Section 302/34 IPC are set aside. Conviction of accused Subhash u/S.307 and that of Suresh u/S.307/34 is set aside. Consequently, their sentence are also set aside. They are in jail. They be set at liberty forthwith, if not required in any other case.

(GOVIND MATHUR),J. (BHAGWATI PRASAD),J.

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